

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

JAMIE CEJA,)
Petitioner,)
v.) CV 115-018
UNITED STATES OF AMERICA,) (Formerly CR 111-359)
Respondent.)

O R D E R

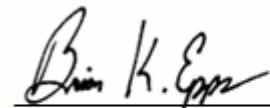
Before the Court is Petitioner's *ex parte* motion for issuance of a witness subpoena without expense to him, pursuant to Fed. R. Crim. P. 17(b). (Doc. no. 16.) Petitioner seeks to subpoena Mr. Phillip Turner for the evidentiary hearing on December 13, 2016. (*Id.*) Petitioner further represents he is both financially unable to pay the costs and fees of the witness, and the presence of the witness is necessary. (*Id.*)

Here, Petitioner's request is not properly brought pursuant to Fed. R. Crim P. 17(b) because a § 2255 proceeding is a civil disposition of a completed criminal proceeding. See Johns v. United States, No. CIV.A. 09-0386-WS-C, 2011 WL 1344245, at *1 (S.D. Ala. Apr. 8, 2011) (declining to issue *ex parte* subpoenas pursuant to Fed. R. Crim. P. 17(b) in § 2255 proceeding). Instead, a motion under Rule 45 of the Federal Rules of Civil Procedure is the proper vehicle by which Petitioner may obtain a subpoena. (*Id.*) Petitioner has established his indigency and demonstrated Mr. Turner's testimony is relevant. Accordingly, the Court **GRANTS** Petitioner's motion and authorizes counsel to issue a Rule 45 subpoena to the

witness and command his appearance for the purpose of giving testimony at the December 13th evidentiary hearing. The fees of the witness shall be paid by the “United States Marshal for the district . . . (2) on the certificate of the clerk of the court upon the affidavit of such witnesses’ attendance given by [Petitioner’s counsel]” See 28 U.S.C. § 1825(b)(2).

This order is not sealed as it is not issued pursuant to Fed. R. Crim. P. 17(b), and the Court **DIRECTS** the **CLERK** to unseal Petitioner’s motion. (Doc. no. 16.)

SO ORDERED this 5th day of December, 2016, at Augusta, Georgia.



BRIAN K. EPPS
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA